



**REGULAR MEETING**  
**PUBLIC EMPLOYEES' RETIREMENT BOARD**

**MARCH 30, 2006**

The regular meeting was called to order by President Carey at 8:30 a.m. Thursday, March 30, 2006. Roll call was taken with all members of the Board being present except Jay Klawon, who was excused. Board members and staff present were:

Carole Carey, President  
Betty Lou Kasten, Vice President  
Robert Griffith, Member  
Troy McGee, Member  
John Paull, Member  
Terry Smith, Member  
Roxanne Minnehan, Interim Exec. Dir.  
Kelly Jenkins, Counsel  
Melanie Symons, Counsel  
Linda Owen, Secretary

**OPEN MEETING**

Stephen C. Kologi, AMRPE; Sue Winchester and Yvette Stanley, Great-West Retirement Services; Jim Kembel, MPPA, MACOP, TIAA-CREF; Howard Biggs, Arnerich and Massena Associates; Nanette Gilbertson, MSPOA; Tom Schneider, MPEA; Mike O'Connor, MPERA Retiree; Bob Bergren, Rick Ryan, Chad Nicholson, Matt Norby, Jack Trethewey, and Ed Regele, members of the Montana State Firemen's Association; and Kim Flatow, Member Services Bureau Chief; Kathy Samson, Defined Contributions Bureau Chief; Carolyn Miller, Administrative Officer; and Barb Quinn, Accounting Supervisor, MPERA, joined the meeting.

**MINUTES OF OPEN MEETING**

The minutes of the open meeting of February 23, 2006 were presented. Mr. Paull moved that the minutes of the previous open meeting be approved as amended. Mr. Smith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

The minutes of the open meeting of March 15, 2006 were presented. Mr. Griffith moved that the minutes of the previous open meeting be approved. Mrs. Kasten seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

*No public comment on any subject of interest to the Board not on the agenda.*

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## **EXECUTIVE DIRECTOR'S REPORT – Roxanne Minnehan, Interim Executive Director**

**EIAC Recommendations** – The Employee Investment Advisory Council (EIAC) met on March 8, 2006. Ms. Minnehan introduced Mr. Howard Biggs, from Arnerich & Massena, who replaced Scott Farris. Mr. Biggs had attended the EIAC meeting and presented the investment options annual review for both the PERS-DCRP and the Deferred Compensation Plan.

Kathy Samson reviewed the investment options individually with that Board and presented EIAC's recommendations for each. The Advisory Council did not make specific recommendations relative to funds matching all required criteria in the Board's Investment Policy Statement (IPS). If Arnerich & Massena recommended "retaining" a fund, EIAC made no recommendation. Mr. Biggs answered questions from the Board members.

Mrs. Kasten moved that the Board accept and approve the above EIAC recommendations (place Neuberger Berman High Income Investor and Artisan Mid Cap Investors on probation and terminate the Neuberger Berman Genesis Trust, RS Diversified Growth and Templeton Foreign A) for the 457 Deferred Compensation Plan. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

Mrs. Kasten moved that the Board accept and approve the EIAC recommendation for fund searches for the 457 Deferred Compensation Plan as follows:

Search for replacement funds for:

- 1) a mid cap growth fund and consider the Neuberger Berman Genesis Fund in this search (Artisan on probation; Neuberger Berman Genesis terminated as small cap blend);
- 2) a small cap blend fund (Neuberger Berman terminated as small cap blend – may be retained, pending search results, as mid cap growth fund);
- 3) a small cap growth fund (RS Diversified terminated as small cap growth);
- 4) a foreign large value fund (Templeton Foreign terminated as foreign large cap value).

Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

Mrs. Kasten moved that the Board accept and approve all EIAC recommendations to place or maintain the following investment options in the "probation" status: SSGA International Growth Opportunities, Vanguard Equity Income, Artisan Mid-cap Investors and Brown Capital Small Company for the 401(a) Defined Contribution Retirement Plan. Mr. Paull seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

Mrs. Kasten moved that the Board accept and approve all EIAC recommendations to search for replacement funds for the mid-cap and small-cap growth funds. Search for replacement funds for:

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- 1) a mid cap growth fund and consider the Neuberger Berman Genesis Fund in this search (Artisan on probation);
- 2) a small cap growth fund (Brown Capital on probation);
- 3) a foreign large value fund.

Mr. Paull seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

**EIAC Appointments** – EIAC currently has three vacant positions. Representatives for the university system, Board of Investments and a local government entity are needed. In January, the Board expressed a preference for a Board of Investments (BOI) representative who exercises direct daily investing as opposed to overall enterprise management. Consideration was given to Clifford Sheets, the new Chief Investment Officer. Mr. South received the request and responded that Mr. Sheets did not currently have time to serve on the EIAC, but recommended Mr. Bob Bugni as the BOI representative for the Advisory Council.

Mr. Glen Leavitt recommended Mr. Kevin McRae to complete his term on the EIAC. Mr. McRae had previously served on the Advisory Council; however, he moved to a new position with the university system and could not “fill” a state employee representative position on the EIAC. Mr. McRae is currently Director of Labor Relations for the Montana University System. Mr. McRae’s previous experience with the State Personnel Division and current experience with the university system allows him to understand many varied employee issues and represent a large cross-section of employees.

Mrs. Kasten moved to appoint Bob Bugni as Board of Investments representative to the EIAC for a 3-year term beginning August 1, 2005 and expiring July 31, 2008; and Kevin McRae as Montana University System representative to complete the term vacated by Glen Leavitt, a term that began August 1, 2003 and expires July 31, 2006. Mr. Smith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

Staff conducted a “search” for a new local government representative to replace Mr. Terry Smith, whose term began August 1, 2004 and will expire July 31, 2007. Mr. Smith subsequently became a Board member and resigned his EIAC position. Several individuals expressed an interest in the position. Mrs. Kasten moved to appoint Katharine Harris as a local government representative to complete the term vacated by Terry Smith (August 1, 2004 through July 31, 2007). Mr. Smith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

**Board Education Policies** – The Board’s education policies need to be completed before the Board begins the RFP process. Board comments have been integrated into the final drafts for approval. Kathy Samson briefly reviewed changes made to the policies.

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*General Education* – Mr. McGee moved that the amendments to the draft (presented on February 23, 2006) Board's Policy on General Education, Board Admin 06, be accepted and the Policy be adopted as presented, with Roman numeral changes. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

*Investment Education* - Mr. McGee moved that the amendments to the draft (presented on February 23, 2006) Board's Policy on Investment Education, Board Admin 07, be accepted and the Policy be adopted as presented. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

**Clarify DCRP Fees** – In June 2005, the Board approved a fee cap of \$300 on the administrative fees assessed to PERS-DCRP participants with account balances over \$50,000. That action resulted in participants with balances between \$40,000 and \$49,000 paying more than the \$300 cap. The Board's original intent may have been to provide an incentive and encourage account/plan membership retention. If this was an oversight and not the Board's intent, the cap should be changed to be set for account balances of \$40,000 or more.

Mrs. Kasten moved to keep the fee for all participants at 0.75% annually and set the \$300 cap for account balances of \$40,000 or more. Rationale: Participants with lower account balances would not be paying more in fees than participants with higher account balances. Mr. Smith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

**Halvorsen Representation** – Mr. Jenkins presented an Agreement to Notice of Change of Counsel. Mr. Jenkins' decision to accept a position in Illinois necessitates a change in counsel with respect to his pending administrative and court proceedings. Mr. Jenkins suggested that Rick Larson, Attorney-at-Law, handle the Lynn Halvorsen case (Montana Highway Patrol disability) as outside legal counsel. Mr. Larson is in the private sector, but used to be a governmental attorney and has remained highly involved in administrative law. Mr. Jenkins felt Mr. Larson is very capable, and is willing to take on this case. His charge would be \$125/hour.

A change in counsel requires the consent of both the client and the attorney to be filed with the Court. The Court and opposing counsel must both be notified of the change. (Section 37-61-403 and 404, MCA) The Agreement states the Board agrees to the following change of counsel: Kelly Jenkins to be replaced by Richard A. Larson. Mr. Griffith moved to approve the Notice of Change of Legal Counsel. Mr. Smith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

Mr. Griffith moved to accept the Contract for Legal Services in the above and noted case. Mr. Smith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

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Mr. Jenkins accepted a position in Champagne, Illinois, as General Counsel with the State University's Retirement System Service of Illinois. His new job begins May 1, 2006. He has discussed a transition plan with Ms. Minnehan and Ms. Symons, and he will continue working until April 14, 2006. President Carey presented Mr. Jenkins with a Declaration of Appreciation.

### *Declaration of Appreciation to Kelly A. Jenkins*

*The Montana Public Employees' Retirement Board extends its sincere appreciation to Kelly A. Jenkins, Legal Counsel of the Montana Public Employees Retirement Administration for your dedication, commitment, outstanding contributions and 14 years of service, 1992 to 2006, to Montana's public employee retirement systems.*

*You effectively served the Board and the participants of Montana's retirement systems. You championed fiduciary responsibility and ethical conduct above and beyond reproach. You have been a proponent of impartiality, loyalty and prudent administration. As the principle author of the Constitutional Amendment requiring that public retirement systems be funded on an actuarially sound basis, you have safeguarded Montana retirement systems from politics. You have insured public retirement system assets are held in trust to provide member benefits and are not diverted.*

*You have shown dedication and commitment to the public employees of Montana. You successfully negotiated with the Social Security Administration to reduce the assessment by tens of millions of dollars and preserved Social Security coverage for all affected employees.*

*You assisted in the design of the of the State's third largest public retirement plan (the PERS Defined Contribution Plan). You insured the statutes adequately addressed all foreseeable issues in reasonable and prudent manners and insured the continued security of the PERS Defined Benefit Retirement Plan.*

*You served as both a general member and Executive Board member of the National Association of Public Pension Attorneys. In these roles, you proudly represented the Montana retirement systems and continued to champion for the highest quality administration and guardianship of all public pension plans.*

*The Public Employees' Retirement Board, its administrative staff, and the public employee members extend their sincere and heartfelt appreciation to you for your exemplary service and counsel. Thank you for your commitment and outstanding contributions during your tenure as an employee of the Montana Public Employee Retirement Administration.*

*We wish you continued success in all your future endeavors.*

*Montana Public Employees' Retirement Board, this 30<sup>th</sup> day of March, 2006.*

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Mr. Jenkins was deeply appreciative of the plaque from the Board. He voiced his disappointment in the efforts by someone to interfere with the Board's administration. His tendency is not to "cut and run," but rather "turn and fight." However, this opportunity he was presented was too good to pass up. He felt the Board would be left in good hands.

Bob Bergren, on behalf of the Montana State Firemen's Association, wished to extend their gratitude to Mr. Jenkins for his years of service with them, providing information and answering questions. He wished him good luck with his new job.

**Joint Issues Committee Board Appointment** – The Joint Issues Committee will be meeting in the Budget Office at the Capitol on April 3, 2006. Mrs. Kasten's term expires March 31, 2006 and another Board member needs to be appointed to the committee. Mrs. Kasten moved that Carole Carey represent the Board on the Joint Issues Committee. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

**PERS Contract** - The Executive Director presented a contract to extend PERS coverage to employees of Davey Elementary School District #12, Havre, MT. Mrs. Kasten made a motion to accept the PERS coverage contract for Davey Elementary School District #12. Mr. Paull seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

The Executive Director presented a contract to extend PERS coverage to employees of Trinity School District #4, Canyon Creek, MT. Mr. McGee made a motion to accept the PERS contract for Trinity School District #4. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

**Jordan Public Schools** – Jordan Elementary School District #1 and Garfield County High School, both of which are currently contracting employers with the Montana Public Employees' Retirement System (PERS), became unified effective June 30, 2005. The unified district is known as Jordan Public Schools. Since these entities are already members of the PERS, there is no need for an employee election to be conducted. However, the unified school district must adopt a resolution of intention and enter into a new local government contract with PERS.

Mrs. Kasten moved to approve the PERS contract for Jordan Public Schools, #HS0421, a unified school district consisting of former PERS-covered employers Jordan Elementary School District #1 and Garfield County District High School #1. Mr. Smith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

**Board Processes Policy Changes** – The Board had previously discussed travel reimbursement to Board members for attendance of various meetings. It was decided that the Board President should determine what is actually and necessary attendance prior to voluntary attendance by Board members. The Board Processes policy was amended to reflect the Board member per diem discussion at their February meeting.

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Mr. Paull moved that the Board Policy NO. BOARD Proc 01, Board Processes as amended. The amendments reflect the previously approved changes to the payment of per diem to Board members. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

**Draft Proposal for Settlement of Governor's Lawsuit** – Ms. Symons and the Governor's attorney, Ann Brodsky, worked out a Joint Stipulation of Dismissal of the Governor's lawsuit against the Board for their hiring action. The Court dismissed the action on the merits with prejudice as fully and finally resolved to the parties' and Court's satisfaction, each party to pay its own costs. No Board action is necessary.

**Review and Finalization of Friday's Hiring Process** – Interviews will be conducted on Friday, March 31, 2006. The Board discussed and clarified final determinations regarding the hiring process, such as public comment regarding the candidates for the Executive Director position. Ms. Symons wanted the Board to reconsider their previous motion to have no public comment regarding the candidates. Under the public participation statute, the Board is required to take public comment before making a decision of significant interest to the public. However, there must be a balance since this is a personnel issue and matters of individual privacy of the candidates must be considered.

The Board determined that no comments of a personal nature regarding any of the candidates will be allowed; only comments regarding the process. The Board will not accept endorsements of any of the candidates. Only verbal comments will be permitted. All commenting individuals will be limited to two minutes. The following statement will be made regarding what constitutes "acceptable" comments:

"This is the time and place for the Board to accept public comment regarding the Executive Director hiring process. The Board will accept comments on the process, the presentation and the qualifications required of a successful executive director. All commenting individuals will be limited to two minutes. The Board will not accept comments of a personal nature or endorsements of any of the candidates. The Board will not permit this process to become a "popularity contest." The Board President will terminate the public participation right of any speaker who violates these requests."

Mr. Griffith made a motion to rescind the Board's previous motion to have no public comment. Mrs. Kasten felt the motion should stand. Mr. McGee seconded the motion, which upon being submitted to vote, was duly carried with five of the attending members voting aye, and Mrs. Kasten voting nay.

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A Board decision was made regarding the date and time for making their final decision because a 72-hour notice must be given. CMS will wait until after the interviews to do the reference checks because the Board's behavioral-type interview questions and the answers given could be double-checked that the person really did do what they said in their interview. The Board will make their hiring decision subject to reference checks.

Mr. McGee wanted a final decision made before the reference checks are done, while all of the Board members are present.

It was decided that, after the top three candidates give 20-minute presentations to the Board, the Board will rank the candidates 1, 2 and 3. That will allow Mrs. Kasten to be able to give her rankings. The Board's tentative decision will be completed the same day as the presentations. There will be no public announcement until after the reference checks are completed, the Board has a chance to convene and confirm their decision, and the unsuccessful applicants are notified.

On April 6, 2006, the Board will meet via conference call, at 1:00 p.m. Part of the meeting may not be open to the public because confidential information may be obtained from the reference checks. A final decision will be confirmed, the Board President will negotiate the contract, and the unsuccessful candidates will be notified. Barb Kain will determine the salary which will be offered at entry level. On April 10, President Carey will make the announcement of the new Executive Director via email and a press release. No meeting will be necessary.

**Future Board Meetings** – Thursday: April 6, May 4 and June 1, 2006.

The Board discussed tentative meeting dates for the next quarter since there were many conflicts with the usual fourth Thursday dates. Mr. Paull moved to approve Board meeting dates for April 6, May 4 and June 1, 2006. Mr. Smith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

**SAVA Committee Meeting** – The SAVA Committee met on March 6, 2006. Dave Ewer, Budget Director, briefly addressed the committee regarding:

- (1) The reestablishment of the Legislative Interim Committee to study the retirement legislation.
- (2) Six pieces of drafted legislation specifically addressing administrative rule-making. He stated the process in place works. The process was exercised and the rules adequately meet the intention of the bill sponsors.
- (3) The status of the MPERA executive director hiring process. The Governor's Office had strong objections to the first process and sent a letter to the PERB president. PERB is currently working in good faith and diligence. Janet Kelly is a representative and the Governor's liaison. PERB has met the letter and spirit of the request.
- (4) Unfunded liabilities of the systems.



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**Board of Investments (BOI)** – Mr. Paul reported that Roberta Eklund, the Interim Research Director, will be leaving her position. The BOI will be doing a nationwide search to find a full-time Research Director and hope to have a list of finalists by the end of April.

R.V. Kuhns and Associates from Portland, Oregon, completed an asset liability study for the Teachers' Retirement System and will give a presentation May 17 or 18. They hope to have the PERS study completed by August, with the possibility of doing the smaller systems later on.

In October 2004, the BOI approved a \$25 million commitment to a regional venture capital fund of funds. Credit Suisse First Boston (CSFB) was to provide another \$15 million to invest. However, in contacting surrounding states, endowment funds, large corporations, banks, and individuals, they were unable to generate interest. As of May 16, 2006, that fund will be dissolved.

An RFP was issued on March 27 for an international dock of equity managers. Response deadline is April 28. The RFP will solicit managers of value, growth and core strategies, with one or more managers being selected for each style. In addition to increasing the diversification of the international equity pool fund by hiring active managers with different styles, the RFP is designed to increase the geographical diversification of the pool by benchmarking the managers against the global benchmark of Morgan Stanley Capital International Index.

**Baumgardner Litigation** – Mr. Jenkins reported that, despite a valiant attempt to get the court to consider the substantive issue of impairment of contract, the court insisted they wanted to hear the issue of class certification only. Mr. Jenkins argued about all of the complexities in trying to figure out a class certification. He wanted the court to make a clear decision related to Joe Baumgardner, and the Board would have the fiduciary responsibility to make sure that decision was applied for all members and beneficiaries of the retirement system. With Mr. Jenkins leaving, Jim Goetz has a continued interest in working on the Baumgardner litigation. Mr. McGee would also like to see a second attorney hired, or even a paralegal, to replace Mr. Jenkins and help Ms. Symons with the workload.

**White Paper on Actuarial Funding Requirements** – Mr. Jenkins felt there was a very sound basis for the Board to consider bringing an enforcement action to enforce the terms of the Constitution that require sound actuarial funding. He stated that the Board could demand that the retirement system be actuarially funded, but that demand does not have to be met by providing funding. It could be met by providing system changes. The Board discussed possible alternatives for dealing with the funding issue, although no decisions were made at this time.

**Operational Summary Report** - The Interim Executive Director presented an operational summary report for the month of February 2006, answering any questions Board members had.

**The following portion of the meeting relates to matters of individual privacy. President Carey determined that the demands of individual privacy clearly exceed the merits of public disclosure. As such, this portion of the meeting will be closed.**

## **CLOSED MEETING**

### **MINUTES OF CLOSED MEETING**

The Executive Director presented the minutes of the closed meeting of February 23, 2006. Mr. McGee moved that the minutes of the previous closed meeting be approved. Mrs. Kasten seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

### **RETIREMENT REPORT – Kim Flatow, Member Services Bureau Chief**

**Disability Claims** – Ms. Flatow presented the disability claims for Board consideration. Following discussion, Mr. Paull made a motion for approval of the disability claims as recommended for Michael Smith, without annual review; and for David Lancaster and Tanya Wilkerson, with annual review. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

**Finalized Service/Disability Retirement Benefits and Monthly Survivorship/Death Benefits** - Applications for service retirements/finalized disability benefits and applications for monthly survivorship-death benefits were presented to the Board. Mr. Paull made a motion to approve the retirement benefits as presented. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

**Kent Gilge** – The Montana Department of Fish, Wildlife and Parks (FWP) requested that the Board grant full service credit to Mr. Gilge for the period of April 2004 through March 2006. Mr. Gilge was involuntarily terminated from his position with FWP in April 2004. As a result of arbitration, Mr. Gilge was reinstated to his position and was awarded back wages through reinstatement.

Mr. McGee moved that the Board grant the requests of the Department of Fish, Wildlife and Parks to pay to PERS \$53,763.14; to give Mr. Gilge service credit for the time period between April 2004 and March 31, 2006; that Mr. Gilge retire with 30 years, 4 months of service credit; and that Mr. Gilge's PERS retirement benefit be adjusted to reflect those years of service credit. Mr. Paull seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

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**Contested Case Report Update** - The Board Attorneys presented a contested matter status report update.

**Robert Vanden Heuvel** - Mr. Jenkins presented an Agreement to Notice of Change of Counsel. Mr. Jenkins' decision to accept a position in Illinois necessitates a change in counsel with respect to his pending administrative and court proceedings. Mrs. Kasten moved to approve the Notice of Change of Legal Counsel. Mr. Griffith seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye.

## **ADJOURNMENT**

There being no further business to come before the Board at this date, Mr. Griffith made a motion to adjourn the meeting. Mr. Paull seconded the motion, which upon being submitted to vote, was duly carried with the six attending members voting aye. The next meeting is tentatively scheduled for Thursday, May 4, 2006, at 8:30 a.m. in Helena.